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Regional Labor Court of the 2nd Region TRT-2: 00004068520155020043 São Paulo - SP

Full Text Judgment Certificate

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REGIONAL LABOR COURT OF THE 2ND REGION

TRT/SP Case No. 0000406-85.2015.5.02.0043

17th CLASS

ORDINARY APPEAL

TRT/SP Case No. 0000406-85.2015.5.02.0043

ORIGIN: 43rd LABOR COURT OF SÃO PAULO

APPELLANTS: 1- AREZZO INDÚSTRIA E COMÉRCIO SA and ANOTHER

2- KELLY SYLVIA PIQUET

APPELLEES: THE SAME

Jurisdiction. Enforcement. Recognition of employment relationship. The jurisdiction of Labor courts' enforcement of social security contributions is limited to judgments and amounts, subject to an approved settlement, that are part of the employee's salary. Transfer allowance. This case involves a single transfer that lasted until the date of contract termination. The permanent nature of the transfer and the consequent absence of entitlement to a transfer allowance have been demonstrated. The plaintiff's appeal is denied.

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The parties appeal against the judgment on pages 385/393, which partially granted the request, supplemented by the decision on the motion for clarification on pages 400/400v.

The defendants, on pages 402/407v., discuss an employment relationship prior to registration; severance pay; fines under article 467 and 477 of the CLT; wages for the period and overtime.

The author, on pages 433/444, discusses the decision to issue an official letter regarding the su-
The crime of perjury has been established; the Labor Court has jurisdiction to enforce the convictions.
Social security contributions for the period of employment recognized in court; differences in severance pay; transfer allowance; compensation for overdue rent; overtime pay.
and night shift allowance; meal break; meal voucher; transportation voucher; damage to image; moral damages; health plan and life insurance.

Defendant's counter-arguments are on pages 451/454v. Plaintiff's counter-arguments are on pages 455/464.

Preparation at pages 430/430v.

VOTE

Adequate resources and timely filing. Correct preparation, carried out by the defendants. Signed by duly appointed lawyers. Admissibility requirements met. I am aware of the matter.
good resources.

Appeal by the defendant

Employment relationship prior to registration

The ruling recognized the employment relationship between the parties for the period between June 26, 2012, and September 30 of the same year.

Dissatisfied, the defendants appeal. They do so on the grounds that the factual and legal elements necessary to establish an employment relationship are not present during the period in question.
They claim that at that time the company's store wasn't even operational, so that
There could be no provision of services by the plaintiff, as an employee. They also make a counterpoint regarding the non-occasional and habitual nature of the provision of services, concluding that
From this perspective as well, one cannot speak of an employment relationship.

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The defendants are wrong.

Initially, I note that the defendants admitted that the plaintiff provided services to them during the period in question. However, they claim she did so as a self-employed individual, receiving a stipend.

Therefore, based on this premise alone, it can be concluded that the fact that the store was not yet operational does not preclude the provision of services. Indeed, the plaintiff provided these services even though the defendants claim she did so as a self-employed individual, a circumstance, I note, that places the burden of proof on the companies to demonstrate the impediment to the right claimed in co

To resolve the controversy regarding the existence or not of an employment relationship, It is necessary to analyze, in each case, the presence of the legal requirements contained in articles 2º and 3rd of the CLT. It is necessary to verify whether the situation is configured in which the worker, supposedly self-employed, but habitually involved in the productive activity of others, despite having contr relative role regarding the work itself, has no control over the activity. economic.

It should also be mentioned that the existence of an employment relationship does not depend solely on the will of the indivi between the contracting parties. There are elements foreseen by law – regularity, subordination, remuneration, personal nature – which, when present, authorize the recognition of an employment contrac between the parties. After all, the employment contract is a real-world contract that emerges from the form and manner in which the services are provided, regardless of what was formally agreed upon. between the contracting parties.

In the case under analysis, although the defendants repeatedly mention that the factual and legal elements necessary to establish the relationship are absent, this allegation is flawed because it is generic and nonspecific to the case.

Yes, because the defendants do not provide precise context for what the plaintiff did before being officially registered in her employment record book and what she did afterward. In other words, it is not possible to verify the factual aspects that distinguish the provision of services within these different scenarios reported by the defendant.

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The companies mentioned objective good faith, private autonomy, and other broad issues, but these do not invalidate the presumption that the alleged independent contract, previously signed, underwent a profound alteration, subsequently transforming into an employment contract, as shown on pages 228/229.

Note that the author began working as a coordinator of mar- in June 2012.
keting. The document, on page 74, clearly demonstrates this fact. It is an email, not specifically refuted by the defendants, in which the company's general manager, Ms. Milena, introduces the new colleague to the other employees. It is worth noting that
transcription:

"Guys,

I would like to introduce you to Kelly Piquet, our new marketing coordinator at Schutz – USA.

Please copy this in future emails related to this area.

Thank you." (sic)

In this first contract, it is crucial to note, the author would perform the function of coordinator. marketing consultant. In other words, exactly the same function that she later performed, but with the

Formalities of registration in the CTPS (Brazilian Work and Social Security Card). In other words, nothing has changed. There is not a single piece of evidence that can prove otherv
to conclude in the opposite sense.

The contract on page 126, translated into our language by means of a sworn translation, as per pages 137/138, far from representing the autonomy alleged by the defendant, merely evidences the typical circumstances of an employment contract. I do not see that this contract can support the argument of animus contrahendi, autonomy of will, or objective good faith, circumstances which, as already mentioned, were presented as the foundation of the defense's argument.

It is pointless to argue that the worker was self-employed, that he agreed to this or that, if the factual circumstances reveal that the circumstances...

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Work arrangements have always been the same – before and after the formal employment relationship.

Finally, regarding the argument of the contingency nature of service provision, a certain logical-argumentative inconsistency in the exposition of the conceptual idea can be inferred from the appeal text.

The defendant stated that "the non-occasional nature of the work is evidenced by the fact that it must be performed habitually, that is, continuously, which is exactly the case in these proceedings."

What appears to be the case, at this point, is that the defendant acknowledges that the work was performed habitually, an assertion that contradicts what was stated earlier. However, even if we do not adhere strictly to the literal text, it is necessary to observe that in labor law, "non-eventuality" differs from the idea of habituality, and there is already an error in the premise used by the defendant.
gap.

There are several theories addressing the issue of occasional work. These include the theory of discontinuity, which defines occasional work as discontinuous, fragmented work occurring dispersed over time, with significant breaks and temporal spacing. There is also the theory of events, which posits that occasional work depends on a specific fact or event that gives rise to a particular work or service. Another theory is that of the purposes of the undertaking (or purposes of the company), where occasional work is assessed according to the normal purposes of the company, so that the occasional worker is one who meets an exceptional need within the framework of the normal needs of the undertaking. Finally, authoritative doctrine refers to the theory of legal attachment to the service recipient, arguing that the occasional worker is not tied to a single source of work, unlike an employee, who is restricted to one employer.

The fact is that one should not rely solely on one theory to define temporary work.
Combining the elements presented, we have as

Characteristics of temporary work: discontinuity of work provision (not being permanently employed by an organization); no legal attachment to a single source.
of work, with a variable plurality of service recipients; short duration of the work performed; and that the work relates to a specific, determined and episodic event in the to-
singe to the regular dynamics of the service recipient's undertaking.

In this necessary conjunction of factors and theories, it becomes clear that there is no way to support the argument of non-eventuality put forward by the defendants. There is no element that could demonstrate a lack of

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continuity of the work performed from June to September 2012. Similarly, it cannot be said that the plaintiff was hired for a single, specific event. And, considering the defendant company's line of business, there is no doubt that functions such as the one performed by the plaintiff are essential to the success of the business enterprise. Finally, it is certain that the plaintiff was legally bound to the service recipient, and this itself contradicts the contract.

The initially agreed upon document serves to demonstrate.

Therefore, as a basis for rejecting the defense's argument, it must be said that eventuality, for the purposes of labor law, does not translate to intermittency, as stipulated by the theory of discontinuity, which is rejected by the CLT (Brazilian Labor Code).

In the case under analysis, I have no doubt that the plaintiff acted personally in the defendant's best interests. even as an employee, starting on June 26, 2012, so much so that the defendant acknowledged this, to to formalize the employment contract starting in October 2012, without, I emphasize, any alteration in the modus operandi related to the provision of services.

I therefore uphold the first-instance judgment that recognized the employment relationship.

The sentence remains intact on this point; it should be emphasized that the calculation of the recognized time of the employment contract must be taken into account for the...

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The calculation of the amounts resulting from the termination of the contract, as decided in the first instance, is correct, so that the decision at the lower court does not warrant amendment on this point either.

Termination payments – fines under article 467 and 477 of the CLT

At this point, the defendants' objections are partly justified.

Contrary to what was decided in the first instance, I do not see that proof of payment of severance pay is given solely through the TRCT (Termination of Employment Contract). Of course not. The termination of employment contract is the instrument that serves to, in the cases provided for by law and, together with

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other documents, to move funds in the linked FGTS account, and also to request unemployment insurance payments.

It obviously serves, under certain circumstances, to prove the payment of the funds.
constants of the contract termination. In any case, it is not the only document that could serve to prove this.

Here, the defendant presented proof of deposit into the plaintiff's checking account, in the amount of R$ 13,925.55 (p. 267). The plaintiff, in turn, acknowledged, when testifying in court, that she received this amount (p. 295v.).

Differences are due to the claimant, especially considering the period of employment recognized in court, with a direct impact on the calculation of the amounts resulting from the termination of the contract. However, there is no basis for applying the penalties provided for in articles 467. and 477 of the CLT. There was, therefore, a well-founded controversy here, which led to the dismissal of these fines.

The defendant proceeded to settle the amounts corresponding to the termination. These were the amounts it considered due. And it did so within the ten-day period stipulated in paragraph 6 of article 477. Therefore, one cannot speak of a deliberate delay in the payment of severance pay.

Similarly, there were no undisputed amounts to be paid at the time of the first hearing. The fine provided for in article 467 is not applicable. **of the CLT.**

I grant the appeal and exclude from the sentence the obligation to pay the stipulated fines. in articles 467 and 477 of the CLT.

Salaries without payment

The defendants argue that the decision ordering them to pay wages for the period from June 26, 2012 to September 30, 2012 should not stand. They claim that there is no basis for claiming wages during this period, as there was no employment relationship. They further state that, with respect to the same period, the plaintiff received amounts as a cost-of-living allowance, totaling R$ 31,500.00. Thus, they maintain that any amount awarded to the plaintiff would constitute a clear case of unjust enrichment.

Regarding the subsequent period, in which the contract was formalized, they argue that the documentary evidence. This demonstrates the payment of wages to which the plaintiff was entitled throughout the entire employment contr They clarify that during this period of effective employment, the plaintiff demonstrably received an advance.

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The plaintiff received a bi-weekly payment, which was subsequently deducted from her total salary paid at the end of the month. They conclude by stating that, at the time of the employment relationship, no amount was owed to her.

Well then.

The defendants were not ordered to pay wages corresponding to the previous period. September 30, 2012. Therefore, at this point, the defendants have no grounds for appeal.

The conviction, as revealed in the judgment on page 388, is limited to the payment of differences corresponding to the months of January and February 2013. And it must prevail, since the documents on pages 248/249 do not prove the payment of the entire amount.

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The generality of the salaries for those two months. On January 15th, the plaintiff received R$ 3,367.00 and on February 15th the same amount. There is no documentary proof that she received advances or supplements to total the agreed remuneration, as shown in the statements on page 236, which, evidently, as the sentencing judge correctly observed, do not serve as proof of payment.

In light of the principle of the suitability of the evidence and considering the provisions would fit of article 464 of the CLT The burden of proof regarding the salary paid to the plaintiff rests with the defendants. This is because salary payment is proven by presenting a receipt duly signed by the employee, and it is also acceptable to prove the respective deposit into the worker's bank account. In the absence of such documents, the presentation of which was the responsibility of the defendants, the judgment ordering them to pay the relevant differences must prevail. No evidence was produced to prove payment of the full amount agreed upon between the parties. parts.

I deny the appeal.

Overtime

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The defendants reiterate on appeal the argument that the plaintiff, during the course of her employment contract, held a management position, and therefore would not be entitled to the overtime pay recognized in the first instance court.

The facts.

The claim that the plaintiff held a position of trust, thus placing her in a position of trust, is unfounded. in the exceptional case of article 62, II, of the CLT.

Law 8.966/94 introduced the sole paragraph to article 62 of the Consolidation of Labor Laws attempting to establish a more objective criterion to differentiate the employees indicated in its item II. Thus, employees in positions of trust who perform managerial and supervisory functions and who differ from other workers by standard are excluded from the overtime regime, under the terms of article 62.

higher salary scale. This differentiated salary standard established by the legislator as a benchmark the effective salary plus 40%.

Thus, only the employees mentioned in the aforementioned legal provision, namely managers, directors, and heads of departments or branches, are not subject to the working hours stipulated in Article 58 . from the CLT, provided that the rule in the sole paragraph is present. **of article 62.**

The interpretation of the article must be restrictive. Here, it is understood that the claimant was not a manager. She wasn't a director either. Nor was she a department head. She was just a coordinator of... marketing.

He did, in fact, receive a very high salary, considering, in the words of the defendant's distinguished lawyer, the average salary standards of workers in this country.

However, this is not what determines whether or not she is entitled to overtime pay. That would only be a factor if it were proven – which it is not – that the amount paid to the plaintiff was indeed 40% higher than that of employees working in the same department.

But even if that were the case, the presence of other elements to rule out its application would also be necessary The provisions concerning the duration of the workday. And, here, they are not included either. gifts.

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As stated, the law refers to an exceptional type of employee: one who manages, performs administrative functions, holds a high hierarchical position, and has powers that equate them to the employer. It does not exempt from the general rule those involved in technical and specific functions. The evidence shows that the plaintiff only implemented marketing campaigns developed in Brazil at the New York store.

There is no evidence in the records that the plaintiff could have hired, suspended, warned, or punished other workers. Furthermore, the plaintiff did not even have employees under her control. subordinates.

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The witness presented by the defendant in court, Ms. Milena, stated that the plaintiff was her subordinate. She declared that the plaintiff "held a position of trust in the company, because in her en- "Given that the activities she performed were trustworthy..."

However, let us remember the teachings of Mozart Victor Russomano, when discussing confidence. ança no contrato de trabalho, expounded in seus Comentários à CLT. The author says that "it is necessa Distinguish four degrees of "trust" in the Brazilian labor law system: a) general trust upon which any employment contract rests; b) special trust under § 2, art. 224, which results from the nature of banking activity and the employee's commission; c) strict trust, from article 499; d) exceptional trust, from article 62 (managers).

There is no question of strict trust in the claimant's case. The trust, in this case, is the general trust referred to by the aforementioned author. It is the trust that stems from good faith, upon which all trust r work arrangement.

The fact that an employee holds a position that the employer considers to be one of trust is obviously not sufficient to qualify for the exception in Article 62 . of the CLT.

This is further evidenced when one considers that the author was always subject to a set work schedule. This is evident from the employment contract (page 228), specifically...

This is a statement in item 03, and also what can be concluded from the oral evidence presented in court.

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Not only does item 4 of the employment contract leave no doubt when it refers to paragraph 3 of article 61 of the consolidated labor laws, the content of which I transcribe below:

§ 3 of article 61 from the CLT: "Whenever work is interrupted as a result of causes
In the event of accidental or force majeure circumstances that make it impossible to carry out the work, the duration of the work may be extended for the time necessary.

river up to a maximum of 2 (two) hours, during the number of days necessary for recovery of lost time, provided that it does not exceed 10 (ten) hours per day, for a period not exceeding 45 (forty-five) days per year, subject to prior authorization from the authority.
competent."

Now, if he truly held a position of trust, free from any control over his working hours, such a clause would never have been considered.

Thus, the evidence presented in no way supports the defense's argument. Therefore, the hypothesis foreseen in item II of article 62 of the Consolidated Labor Laws is not applicable, and I uphold the first-instance decision.

I deny the appeal.

Claimant's appeal

Social security contributions

The author argues that the Court should determine the social security contributions due on the salary payments made during the period for which the employment relationship was recognized by the Judiciary.

Without reason.

Article 876, single paragraph, of the CLT It states that:

"Social security contributions due as a result of a decision rendered by Labor Judges and Courts, resulting from a conviction or approval of an agreement, including on wages paid during the recognized contractual period, will be enforced ex officio" (amendment).

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as per Law No. 11,457, (Official Gazette of the Union, March 16, 2007, published in the Official Gazette on March 19, 2007). (original without emphasis).

However, the Supreme Federal Court, on June 13, 2012, in the judgment of the Appeal Extraordinary Appeal (RE) 569056/2007, filed by the INSS against a decision of the Superior Labor Court, unanimously accepted the understanding contained in item I of Precedent 368. of The Superior Labor Court, and therefore denied the appeal filed by the INSS.

Thus, it is undisputed that the jurisdiction of the Labor Courts to enforce social security contributions is limited to judgments of conviction and to amounts, subject to an approved settlement, that are included in the contribution salary.

In this regard, Binding Precedent No. 53, Approved in the session of June 18, 2015, still pending publication:

"The jurisdiction of the Labor Court"

lho foreseen in article 114, item VIII, of the Federal Constitution achieves the official execution of Social security contributions related to the subject matter of the judgments it renders and agreements it approves.

In this context, the proposed debate no longer makes sense. Therefore, the statement is correct.

Severance pay

The author states that the judge of first instance, in making his decision, left...

to determine the integration of overtime pay, night shift pay, and compensation under Article 71 of the CLT The court ruling only addresses the termination-related aspects of the calculation of overtime pay. It further states that the compensation for the amount of R$ 13,925.55 received upon termination should be disregarded, as the plaintiff cannot specify what this amount refers to.

Well then.

Initially, I see that the additional payment for the shift is irrelevant to the issue under discussion, since the work during the night shift was not recognized for the plaintiff, and will not be recognized here either, according to th fabrics are lined up below.

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On the other hand, the author was also not granted payment for the break she claims not to have taken, and this, too, will not be altered. In any case, it is worth noting that, since the claimant understands that the unused break corresponds to a payment of an indemnifying nature (as she states in her appeal), there would be no basis for discussing integrations or repercussions.

However, regarding the remaining issue, namely, overtime, when addressing the topic under debate, which is the integration or impact of the bonus on other contractual payments, I do not see the relevance of the plaintiff appealing this matter.

Let me explain.

To determine the impact of a payment that has a wage-related legal nature on other benefits, it is necessary to know the calculation basis of the benefit receiving the impact. If the awarded payment is included in the calculation basis of another labor benefit, then the impact of the former is due on the latter.

Here, the claimant's right to overtime pay was recognized. This overtime pay impacts the calculation of severance payments, including notice period, vacation pay, proportional thirteenth salary, etc.
In other words, they reflect, affect, or, as the claimant prefers, "integrate." In this context, the name given is irrelevant, as it's all the same thing. Shakespeare would say: "A rose by any other name would smell as sweet."

Therefore, I see no practical use in the claimant seeking integration rather than the related benefits. In this case, she lacks standing to appeal.

Regarding the compensation authorized in the first instance, that's also not the case.
The first-instance decision deserves to be overturned.

The author received the amount of R$ 13,952.55. This amount, given the circumstances and time in which she
The fact that it was made available obviously refers to the settlement of amounts resulting from the termination. The author may not know what this is about. But the defendant does. Failing to authorize the com

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In this case, it clearly constitutes a hypothesis of unjust enrichment of the plaintiff, which, obviously, is not permitted by law.

I deny the appeal.

Transfer fee

The author claims she is entitled to payment of the transfer allowance, since she signed a contract in Brazil and was later transferred to New York City.

Without reason.

Article 469 provides of the CLT that "the employer is prohibited from transferring the employee without their conse consent, for a location different from that resulting from the contract, not considering as a transfer that which does not necessarily entail a change of domicile."

In turn, paragraph 3 of the aforementioned article of law stipulates that "in case of need for service the The employer may transfer the employee to a location different from that stipulated in the contract, notwithstanding the restrictions of the preceding article, but in that case, the employer will be obliged to pay a supplementary payment, never less than 25% (twenty-five percent) of the wages that the employee received in that location, for as long as this situation lasts."

Here, the plaintiff seeks payment of the transfer allowance, arguing that the contract did not provide for the possibility of transfer. She claims the transfer occurred solely at the defendant's behest.

The author's claim borders on bad faith.

We are dealing here with a scenario in which there was a single transfer that lasted until... Date of contract termination. The permanent nature of the change and the consequent absence of entitlement to a transfer allowance have been demonstrated.

In this case, there is no basis for applying Jurisprudential Guidance No. 113 of SBDI-I. It is irrelevant whether or not there was a clause authorizing the transfer. The only condition that justifies receiving the additional payment in question is the temporary nature of the change. In this cas It wasn't temporary, but definitive.

Furthermore, and I consider this the fundamental point, the claimant admitted in her testimony, as seen in the minutes, page 295, that she was hired in Brazil to work in New York.

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York, where the first Schutz store would open.

Broadly speaking, there would be no need to even talk about a transfer, since, from the beginning, it was foreseen that the services would be performed in New York. If that took a while to h The slightly higher figure than expected was due to the delay in the store's opening. This does not alter the original condition initially foreseen that the plaintiff would provide services on-site. foreigner.

Overtime – night shift pay and holiday pay.

The author intends for the work schedule described in the initial pleading to be accepted, on the grounds that the defendant should have maintained formal timekeeping records, as per article 74. § 2 of the CLT. Since he did not do so, he understands that the work schedule outlined in the initial pleading should be accepted, in accordance with the guidance embodied in the Summary...

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la 338, I, to TST.

Well then.

Initially, I note that the defendants, at the store where the plaintiff worked, were not obligated to maintain a schedule or even to formally monitor the working hours of their employees.
hadores that were activated there.

This is because there is no conclusive evidence that more than ten employees were working in the store, as stipulated in paragraph 2 of article 74. of the CLT.

Furthermore, the provisions contained in article 74 of the CLT These are administrative in nature, and failure to comply will result in the application of the penalty stipulated in Article 75. conse

Well, the author worked in a store in New York City. Obviously, in a foreign country, the company would not be obligated to comply with an administrative labor order, which has limited application to the national territory.

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Yes, because labor inspection and oversight is carried out by the Executive Branch, through the Ministry of Labor and Employment (MTE) and its labor inspectors, who are responsible for ensuring respect for and compliance with labor regulations, including those of an administrative nature, within the national territory. It is inconceivable to think that a national company operating on foreign soil could be fined for violating an administrative regulation applicable in Brazilian territory, especially given the sovereignty inherent to nation-states.

Therefore, there was no obligation to record and monitor employees' working hours. This is not to say that the company should not observe the rules regarding working hours. That's not it. They were not required to keep a time card. And if they were not obligated, obviously there is no way to demand that they present them as pre-established evidence in a legal proceeding.

This falls within the scope of Brazilian Labor Law.

Therefore, the hypothesis is different from what is addressed in Precedent 338. from the TST. This is what doctrine calls distinguishing, justifying the non-application of the Summary Ruling intended by the author, since the assertions contained in the opinion allow us to conclude that the situation dealt with her It responds to a particular situation arising from a distinct factual hypothesis, thus requiring a different legal solution.

Even if that were not the case, the result would not be different. In order to exhaust the subject, I add that the non-presentation of the controls (if these were required) would only presume the veracity of the working hours stated in the initial pleading. Other evidence could refute this presumption, and that is precisely what is happening in the case under analysis.

The oral evidence presented in court refuted the long and exhausting narrative presented in the initial pleading.

Ludyana's testimony, given as a witness at the request of the plaintiff, is clearly biased, of in order to reveal their lack of commitment, as will be analyzed in the following lines.
More realistic than the king himself, he further extended the already extended journey, declared by author, when testifying in court.

The evidence presented allows us to conclude that the work took place from Monday to Friday, from 9 am to 7 pm, with a one-hour break. The Origin correctly established the parameters and other details.

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Criteria for calculating overtime pay.

Furthermore, when it comes to evaluating oral evidence, I give special importance to the analysis made by the judge of first instance, since he was the one who instructed and sentenced the case. After all, He was the one who maintained direct contact with the parties, witnessing hesitations, insecurities, and ultimately the emotions that each witness revealed during their testimonies.
In court.

Except in cases of clear errors in the assessment of evidence, the work of the trial judge must be valued, especially in cases such as...

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This, I repeat, is where the Magistrate details the factual circumstances surrounding the...
The claimant's work.

I also note, with regard to holidays, that the defendant did not indicate which ones were actually worked, so, on this point as well, the first instance judgment does not warrant modification.

Since the work was not proven to have been performed during nighttime hours, the plaintiff is not entitled to the corresponding additional payment.

Thus, the first-instance judgment remains intact.

Transportation allowance and meal allowance.

I note, at the outset, that the author did not include the claim relating to these titles in the list of requests contained in the initial pleading.

However, the claim and its grounds were included in the cause of action, thus characterizing what doctrine has come to call a misplaced claim. Even though the plaintiff did not formulate an express claim, she did so in the cause of action. It is therefore evident that there is no impediment in the initial pleading that would prevent the examination of the merits, especially since the defendant defended herself against these claims and did not even raise any possible issue of the claim's inadequa

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It is worth noting that in Labor Courts there is not the formal rigor of civil procedure, with the Principle of Simplicity and Informality prevailing, and there is no reason, in this case, to consider the claim under analysis to be unsuitable.

Once that issue is resolved, there is no doubt that the request is doomed to fail.

With regard to food, there is in fact no legal obligation, nor...
There was a contractual provision stating that the defendants would provide food vouchers to the plaintiff.
And, contrary to what the...

The plaintiff, in her appeal, did not allege that the defendant, in her defense, had paid the debt in question. analyzed.

Regarding transportation vouchers, I believe the governing law on this matter is Law 7.418/85. – This applies only to workers currently employed in Brazil. And that is not the case for the plaintiff.
And I say this because that is what can be inferred from reading the provisions of the aforementioned law. I transcribe some to clearly demonstrate what is being said:

Article 1. The transportation voucher is hereby established, which the employer, whether a natural or legal person, shall advar
For the employee's effective use in commuting expenses between home and work and vice versa, through the public urban or intercity and/or interstate collective transportation system with characteristics similar to urban systems, managed directly or through concession or permission of regular lines and with fares set by the competent authority, excluding selective and special services.

Article 4 - The granting of the benefit hereby established implies the acquisition by the employer of the Transportation Vouchers necessary for the employee's commute between home and work.
work and vice versa, using the transportation service that best suits you.

Article 5 - The company operating the public collective transport system is obliged to issue and sell the Transportation Voucher.

the price of the current tariff, making it available to employers in general and assuming the costs of this obligation, without passing them on to the service tariff.

Now, the plaintiff worked in New York. How can one even consider the applicability of said law in foreign territory, considering the specific peculiarities of public transportation in each country?

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Country. How to compel a foreign transportation company to market transportation vouchers, making them available to Brazilian employees.

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Even if it is argued that, in this case, compensation would be due.

In the corresponding case, the plaintiff has no better luck.

The author did not even provide information about the transportation, route, and expenses incurred during the trip.

Finally, it must be considered that the law (sole paragraph of article 4) stipulates that the employer is responsible for paying for transportation expenses exceeding 6% of the employee's basic salary. Now, considering the claimant's salary level, it is difficult to conceive that she would have had expenses for public transportation in that country exceeding the percentage stipulated by law.

Therefore, without further elaboration, there are several grounds to support the dismissal of this request.

Damage to image

Note that the author does not specifically address the grounds for dismissing the claim.
The judge ruled against the request, considering that there was no evidence regarding the use of the author's image.
tora in advertising campaigns. The document on page 127 would not allow this inference.

Indeed, the use of an image without the consent of its owner, regardless of its intended purpose, constitutes an unlawful act, as it violates the individual's personal legal rights. Thus, the use of an employee's image for commercial purposes without prior authorization, even if no embarrassment arises, constitutes an unlawful act, resulting in civil liability for moral damages, pursuant to Article 20 . of the CC.

However, as the trial judge correctly observed, there is no proof that the defendant used the plaintiff's image in advertising campaigns. Such proof would be eminently documentary.

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It is not mental and does not exist in the records, and the document on page 127 does not allow us to conclude that it is an advertising campaign.

Moral damages

In fact, I do not see how the plaintiff could have suffered moral damages due to the mandatory use of the defendant employer's branded footwear.

There is no proof of this obligation, but even if its use were required, it must be considered that the plaintiff was hired as the company's marketing coordinator. Involved in implementing advertising campaigns and attracting clients, it would not be reasonable for her to show up for work displaying [something].

feet, footwear other than that produced by the company.

A comparison is in order: it would be completely strange and unreasonable for Volkswagen's marketing coordinator to visit clients using a Ford vehicle. Or for Apple's marketing coordinator to circulate in different media using a Samsung cell phone.

It is not possible for either party to come to court claiming moral damages for using products manufactured by their respective employers, especially considering the function for which they worked.
They were hired.

In this context, considering that it is a renowned women's footwear brand, it would be unjustifiable and strange for the plaintiff to use footwear from a brand other than that of the defendant.

This request merely reveals the deception inherent in most claims for moral damages filed in this Specialized Court. A large portion of the lawsuits include a request for compensation for moral damages. The arguments are extremely varied, but what matters, and should serve as a guide for the judge, is that mere displeasure, annoyance, or hurt feelings are not sufficient to support a claim for compensation for this type of damage.

To acknowledge moral damages to a person because they were instructed to wear the footwear of the company that hired them would be to relativize morality itself excessively. If human dignity...
As Kant says, it consists precisely in its capacity to create universal laws, which underpin the prevailing morality in a society.

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It would be absurd to admit that the circumstances described in the initial narrative could, by themselves, cause the moral distress that the plaintiff claims to have suffered.

Furthermore, I reiterate, considering that this is the person responsible for implementing the company's advertising campaigns. And it makes no difference whether the plaintiff paid for or received the shoes for free, especially considering the plaintiff's high level of remuneration. If she felt she shouldn't have paid for the product, she should have requested reimbursement of the expenses incurred, and to do so, she would have had to demonstrate the relevant expenses, which, as the judge of first instance correctly observed, sh

The request is doomed to fail.

Health insurance and life insurance

The author is also wrong on this point.

Legally, employers are not obligated to provide health insurance to their employees. Therefore, the plaintiff is not entitled to the benefit sought in this action.

With regard to life insurance, the author would fall under the provision of Article 2, item III, of Law 7.064/82, since she was hired in Brazil to provide services abroad
Or. And if that is the case, the provisions of Article 21 of the same Law are applicable, meaning that the company would be required to take out life and personal accident insurance. worker's vor.

This, however, does not entitle her to take out the policy. Only the heirs would be entitled to the life insurance payout if the plaintiff had died, which, fortunately—

That's not true, it didn't happen.

Official document – false testimony

The trial judge, understanding that the witness presented...

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The court, finding that the author lied in court, ordered that an official letter be sent to the Public Prosecutor's Office to investigate the alleged perjury.

In light of this decision, the author expresses her disagreement. In short, she states that it is not... justifies such a measure and that the hypothesis would result in the characterization of its curtailment of defense.

Well then.

The claim of denial of the right to a defense, in this case, is completely unfounded, since the plaintiff produced evidence and there was not a single moment in which she was prevented from doing so, in a procedural instruction conducted in a very satisfactory manner by the judge of first instance, as as revealed in the attached hearing minutes

the documents.

In any case, I see that sending the official letter is not necessary.

As seen, the witness Ludyana presented inconsistent and decontextualized testimony. based on the factual premises under discussion in the case file.

However, the question remains: did she lie deliberately?

I don't think so.

There are many issues under discussion in this process, permeated by a context of indeterminacy. Working hours and circumstances related to the contract, as well as points to... While the responsibilities inherent to the plaintiff's position are not presented in perfectly clear outlines, none of this is evident.

I'll give them the benefit of the doubt.

The witness was mistaken on several points. Nervous, as often happens to many who present themselves as collaborators of the Court in the search for the real truth, she gave testimony that contributed nothing to the resolution of the case.

JUDICIAL BRANCH

REGIONAL LABOR COURT OF THE 2ND REGION

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Regarding the controversy, I don't see how it could be characterized as perjury.

I reject the request to send official letters.

DEVICE

The Judges of the 17th Panel of the Regional Labor Court of the 2nd Region AGREE to PARTIALLY GRANT the appeal of the defendants to exclude from the judgment the obligation to pay the fines provided for in articles 467 and 477 of the CLT and PARTIALLY GRANT the plaintiff's appeal to set aside the requirement to notify the Public Prosecutor's Office ex officio regarding the potential crime of perjury. In all other respects, the first-instance decision is upheld, including regarding...

the amount awarded in the judgment.

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Rapporteur